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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204008

DATE: July 30, 1981

MATTER OF: NonPublic Educational Services, Inc.

DIGEST:

Protest that hourly rate bid is below Service Contract Act minimum wage rate is dismissed, since fact that bid is below cost does not preclude award and in event bidder should violate Service Contract Act during performance of contract, that would be matter for Department of Labor which is responsible for administration and enforcement of act.

NonPublic Education Services, Inc., protests the award of a contract to D. J. Findley & Company (Findley) by the Department of the Army under solicitation No. DAKF48-81-B-0036. The basis of the protest is that the hourly rate bid by Findley is below the minimum wage rate established by the Department of Labor under the Service Contract Act, 41 U.S.C. § 351, et seq. (1976).

The fact that Findley may have bid an hourly rate below the minimum Service Contract Act rate does not mean that Findley intends to violate the Service Contract Act. Findley merely may have submitted a below-cost bid. In this regard, we have held that there is no legal principle that precludes an award to a low bidder simply because it chooses to bid at a loss. Massa Flooring Co., Inc., B-187974, January 19, 1977, 77-1 CPD 40. To properly reject a bid as unreasonably low would require a determination that the bidder is not responsible. Our Office does not review protests against affirmative determinations of responsibility absent a showing of fraud on the part of procuring officials or that definitive responsibility criteria in the solicitation have not been applied. Massa Flooring Co., Inc., supra. Neither exception is alleged here.

In the event that Findley should violate the Service Contract Act during the performance of the contract, that

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would be a matter for the Department of Labor and not our Office, since the Department of Labor is responsible for administration and enforcement of the act. Massa Flooring Co., Inc., supra.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel